

might prevent cloture from being invoked. That amendment has been disposed of. It was a unanimous vote. It was worked out with Senator BOXER and Senator NICKLES and supported by every Senator who is present.

I hope we can invoke cloture tomorrow and get on with the amendments that should be debated on each side. And, having said that, I am happy to yield to the Senator from South Dakota before I send the cloture motion to the desk.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, let me say I am disappointed that the cloture motion will be filed. I respect the decision of the distinguished majority leader, but I remind our colleagues that only three Democratic amendments have been considered. One amendment offered by the majority was debated by the body for over 3 hours this afternoon. And I might add it was a nonrelevant nongermane amendment. So we have really not had much of an opportunity to debate many of the very relevant, germane amendments that reflect the legitimate concerns expressed by our colleagues over the course of the last several days.

Let me just go back, if I may for just a moment, to remind my colleagues that this bill was introduced on Wednesday, January 4, with very significant and important differences from S. 993, the unfunded mandates bill that was reported last year.

The Governmental Affairs Committee held a hearing the next day, on January 5. There was a markup in Governmental Affairs scheduled for Friday, January 6. Senator GLENN, the ranking member, on behalf of several Democrats, asked for time to prepare amendments and consider issues raised at the hearing. The chairman, Senator ROTH, subsequently agreed to put the markup over to Monday, the following week, with the requirement that all amendments be filed by Friday, January 6, at 10 o'clock.

Our committee members complied with that request in good faith.

The Governmental Affairs Committee then had a markup on Monday, January 9, at 10 o'clock. Members were originally told the chairman would oppose all amendments because the majority leader wanted to take them up on the floor. So our committee members again, in good faith, cooperated and delayed offering many of the amendments in committee, because they had the expectation that these amendments would be properly debated and considered on the floor. Democrats objected to eliminating the committee from the legislative process. A markup was held, and amendments were offered. All Democratic amendments were defeated as a result of this dictate on a partisan vote, except for three that were accepted by the chairman.

At the markup, members were told that there would be no committee report. There were strong objections at

the time, and, of course, the whole controversy relating to the committee report has been very much a part of the debate on the floor over the last several days.

The Budget Committee held its markup at 2:30 that same Monday. At the request of the chairman, several Democratic members of the Budget Committee agreed to withhold offering their amendments until the bill was to be considered on the floor.

Committee members were then told there would be ample opportunity to offer these amendments on the floor, and Democratic members asked that a Budget Committee report on S. 1 be filed. It was our understanding that there would be a report filed. Of course, that did not happen as it was promised.

So, Mr. President, in summary, let me just emphasize, we have dealt in good faith all the way through this process. We had hoped that we could have ample consideration of the bill in both the Budget Committee and the Governmental Affairs Committee—and that did not happen. We were hoping that we could have a report before the bill came to the floor—that did not happen. We were told we would have an opportunity to consider amendments on the floor—germane amendments in many cases—and that has not happened.

In good faith, I think, Senator DOLE and I have attempted over the last day to find an agreement—and that has not happened, either.

There is no filibuster going on here. In my view, and I think in the view of many of our colleagues, there are very legitimate concerns about many of these issues.

The concerns have to be addressed prior to the time many of us feel comfortable voting on final passage. It is my hope and expectation that, if we had ample consideration of some of these legislative issues, there could be a favorable vote. But certainly, that is going to take a reasonable amount of time. I would hope that we could oppose the cloture motion tomorrow morning.

Mr. DOLE. Mr. President, I think one example is today we spent nearly 4 hours during a recess to try to work out the Boxer amendment which had to do with violence in women's clinics. It is a very important issue. It has nothing to do with this bill. And we spent the last 2 or 3 days not discussing the amendments but discussing parliamentary procedure and whether or not we can adopt the committee amendments, which generally is a matter of course.

This is a bill that has not changed a lot since last year. It has not changed much since last year. Unless something happened across the countryside that this Senator is not aware of, it is supported by the Governors, the mayors, the city officials, township and county officials, and all the others, as has been indicated by the Senator from Idaho in the debate.

The House will start action on this bill on tomorrow. They will probably demonstrate, as they did in the congressional coverage, that they can pass the same bill in an hour and 20 minutes that took us 5 days because of so many amendments that were not germane. I would not suggest that we want to be like the House. I am very happy to be the U.S. Senate, and am very happy to have been in the House years ago, too.

But it seems to me that we can bring this matter to a close. If cloture is invoked, all the germane amendments are going to be there. They can be a debated, adopted and disposed of in one way or the other.

So I hope that tomorrow we can move on this bill. We may not. We have one Senator with five relevant amendments; another three, relevant; two relevant. We have the same on the Republican side; one Member with one or two relevant amendments, whatever they may be. But they add up to 180 amendments. It is much like the tax bill. I have had a few tax bills on the Senate floor.

So I certainly will continue to work with the distinguished Democratic leader. We want to accommodate our colleagues wherever we can on both sides of the aisle. And we will continue to work to do that.

I would be willing to ask right now that all the committee amendments that have not yet been disposed of be agreed to en bloc. I ask unanimous consent that all committee amendments that have not yet been disposed of be agreed to en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. We object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. It is an indication that we are not making progress.

THE EASTER RECESS

Mr. DOLE. Mr. President, I wanted to make one correction. We have had great difficulty with the Easter recess. I will take the blame for most of it. But a letter went out today saying thanks for the extra week. What extra week? It is not an extra week. We are not getting 3 weeks off. We are getting a week before Easter and a week after.

By the time the letter went out it had almost the entire month of April. It is not going to happen. We will be out April 7 to April 24. That is 17 days. We are going to be way behind the House. The House has 3 weeks. We will be about 2 months behind the House by then at the rate we are going.

So I hope we do not have to put out anymore. If we want a fine letter on the Easter recess, we have already put out the hotline.

CLOTURE MOTION

Mr. DOLE. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented

under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 1, the unfunded mandates bill:

Bob Dole, William Roth, Dirk Kempthorne, Bill Frist, Trent Lott, Chuck Grassley, Craig Thomas, Judd Gregg, John Ashcroft, Ted Stevens, Conrad Burns, James Inhofe, Paul Coverdell, Spencer Abraham, Christopher S. Bond, Bob Smith, Rod Grams, Don Nickles, Alfonse D'Amato, Larry Craig.

Mr. DOLE. Mr. President, when will that motion ripen?

The PRESIDING OFFICER. One hour after the Senate convenes after 1 day of session.

Mr. DOLE. Mr. President, I apologize to the Senator from Arkansas for taking so long.

I say to my colleagues that at 11 o'clock tomorrow we will be back on S. 1. There will be 30 minutes equally divided between the Senator from Michigan and Senator KEMPTHORNE and Senator BYRD. At the hour of 11:30 the Senate will proceed to vote on the Levin amendment regarding feasibility, and immediately thereafter we will proceed to a cloture vote on S. 1; and, we will waive the mandatory quorum under rule XXII B.

Mr. President, I yield the floor. I thank my colleague from Arkansas.

Mr. BUMPERS addressed the Chair.

Mr. DASCHLE. Mr. President, if I might just take 1 more minute to comment about the importance of the vote tomorrow, I think it is very important that Senators understand the difference between germaneness and relevance. We have a lot of amendments pending that are very relevant and that, under the strict rules of parliamentary definition, may not be germane.

The distinguished Senator from Michigan has raised his point on a number of occasions during the debate over the course of the last several days. Senators need to be aware that in many cases, while an amendment in question may directly affect this legislation, may be directly relevant, it may be ruled not germane.

So this is a very important vote tomorrow morning, and I hope Senators will take care as we consider the importance of our opportunity to raise these issues in a constructive way as we have been doing the last several days.

With that, I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, the question was how much business is the catalog industry doing in this country? The answer is almost \$100 billion a year and growing at a rate of 6 percent a year.

To judge by the number of catalogs coming into my house, they are growing much faster than that. So you might ask, No. 1, why should these people bother with collecting a tax on behalf of the States where they sell merchandise?

I used to be a small town merchant. I had a hardware, furniture, and appliance store. I even had a cemetery and practiced law as well. I did anything to try to feed my wife and three children.

My biggest competitor was not the guy down the street. It was the Sears & Roebuck catalog. They do not do much catalog business anymore; I think maybe Sears does no catalog business now. But I can tell you that offices of every Senator in the U.S. Senate has received communiques after communiques in the last 3 days saying, please support Senator BUMPERS' amendment. They are from small town, main street retailers all across America because it is not just Wal-Mart and K-Mart that are putting them out of business; it is the catalog business which enjoys a competitive advantage because they do not have to collect that 5 to 8 percent sales tax.

What would this mean to your State? In my State of Arkansas, it would mean \$19.6 million a year. In Illinois, \$233 million a year; Pennsylvania, \$145 million; New York, \$359 million; and California, \$482 million.

Call our former colleague, Governor Wilson in California, and ask him how he feels about this legislation. It is supported by the National Conference of Mayors, the National Governors Conference, the National Conference of County Executives. Who are we trying to help with S. 1? The Governors, the mayors, and the county executives.

Mr. President, I used to be Governor of my State. These mandates drove me crazy. It was a big issue with me 24 years ago when I first became Governor of my State.

I am not too crazy about this particular unfunded mandates bill, even though I was a cosponsor of it last year, and I am not at all sure I am going to vote for this one. But be that as it may, if you were to ask some Governors in their State, "Would you rather have the right you would get under the Bumpers amendment or the mandates bill?" they would take this legislation, because they are scared to death that this mandate legislation will never amount to anything.

And you might say, "These people do not do business in your State, so why should they collect a sales tax there?" But they do impose a burden on the States—they send 3.3 million tons of catalogs and solicitations into the landfills of this country every year. And what is one of the biggest problems every mayor has? Why, the local landfill. In a lot of jurisdictions in this country it costs \$100 a ton to dispose of garbage. But it is not just the 3.3 million tons of catalogs which mail-order companies send into the States. All the packaging that their merchandise

comes in has to be disposed of, too. How much are the catalog houses contributing to the mayors to help them dispose of these millions of tons of garbage? Not one red dime.

Mr. President, this is not designed to be punitive. It is designed to be fair. In order to be fair, I want to say this: There are a few mail order houses in this country which collect sales taxes in every State where they send products. There is one very notable case of such a company—essentially an office supply house which does over \$200 million in business a year. When they formed the company, they sat down in the boardroom and said, "Shall we or shall we not collect sales taxes on our sales and remit to the States?" They decided, as good citizens, they would collect a sales tax and remit it back to every State they shipped into. Do you know who the founder of that company was? It was Senator ROBERT BENNETT of the great State of Utah. He said to the Small Business Committee during a hearing last year that "We thought it was the right thing to do."

Mr. President, we have made this bill as simple and fair as we know how to make it. No. 1, we only require mail order companies to file a return with the States every 3 months. No. 2, we set up a toll-free telephone number at the State level so that any questions the catalog houses have can be resolved free of charge. And we have exempted all but 875 of the 7,500 mail order houses in the country, because we exempt every company which does less than \$3 million in business a year. Of the 7,500 mail order companies in this country, 6,675 of them do not do \$3 million a year. The mayors did not like it because I exempted them. But we thought it was fair to do so because this amendment could create a slight administrative burden on small companies. So only 825 of the 7,500 catalog sales houses in this country are going to be affected by this bill.

Mr. President, sometimes the mail order houses say this is too complicated. I am not going to belabor it tonight, but tomorrow I am going to bring about a week's supply of catalogs that came into my home, and I am going to show you why that argument that this is too complicated on us will not fly. The reason it will not fly is because a lot of them already collect use taxes in as many as 25 or 30 States. Senator BENNETT's company says, "Include sales tax unless you are from Alaska, Delaware, Montana, New Hampshire or Oregon, which do not have sales taxes." And then look at what they say: "If your order is less than \$10, include \$2 for shipping charge. If your order is \$10 to \$25, include \$2.50," and here is another chart that you have to look at when you order. So they themselves have very complicated catalogs sometimes. And it would be immensely less cumbersome if you simply said: "Send with your order the local sales tax."

Mr. President, main street merchants are suffering because they are at such a competitive disadvantage. Let me tell you one other thing. There are some out-of-State companies that really drive local retailers up the wall. There are out-of-State companies which say, "Go down to the local store, get the model number of the product you want, and call us toll free at this 800 number." You think they do not say that? Look at this advertisement: "Discount Wallcovering. Shop the phone way. All brands, first quality, free delivery. No sales tax (outside Pennsylvania)." But here is the real clincher: "Shop in your neighborhood. Write down the pattern number book and then call Wallcovering, Inc."

How would you like to be a wallcovering retailer and somebody comes in and goes through all your merchandise, picks out the number of the wallcovering they like and they said, "Adios, see you later." They go home, get on a 1-800 line and call this outfit and they say, "Here is the pattern I want, ship it to me with no sales tax."

There are going to be a lot of Senators that vote against this amendment. But there is not one Senator in the U.S. Senate in his heart of hearts that would not tell you that such a practice is grossly unfair.

Here is an ad by an outfit that is too small for anybody to read unless you are right on top of it, so I will tell you what it says. It is a company that sells boats, motors, fuel, water pump kits, everything from the world of boats to everything that makes a boat run. What do they do? They say, "Nobody beats our deal." Up here in red it says, "No sales tax added outside of North Carolina."

Mr. President, I hate to belabor the RECORD, and I am not going to do the whole thing, but I want to read you a letter that I got from a person in the state of California that was in the boat business, Long Beach Yacht Sales, Long Beach, CA.

JANUARY 18, 1994.

Hon. SENATOR BUMPERS,
Chairman, Committee on Small Business, Russell Senate Office Building, Washington, DC.

ATTENTION: MR. STAN FENDLEY, TAX COUNCIL: Thank you, in advance, for your sponsorship of legislation regarding the collection of interstate sales tax. This week we lost a \$240,000 deal as a result of a sales tax issue. The buyer bought a boat in Oregon to avoid our local and state sales tax. The vessel will be kept out of state for the required period of time and will be subsequently brought into California after the waiting period has elapsed. Based on our local tax rate of 8.25% the resulting tax would have been \$19,800.

Not only did we (and the State) lose this deal, but we also lost the time and expenses involved in upselling the customer to a more expensive boat (from \$140,000 to \$240,000), sea trialing the boat and providing extensive consultation regarding the product. The customer thanked us but basically said for \$19,800 he would have to make an economic choice to buy elsewhere.

Sincerely,

RAY JONES, Owner.

He told them, "I can buy it in another State and bring it into this State and save myself almost \$20,000."

Who in their heart of hearts in the U.S. Senate thinks that is fair?

So I say, this is not punitive, and I am not just pointing the finger at all of these people. Fingerhut out in Minnesota said they do not think this would be much of a burden on them. L.L. Bean, in the State of Maine, said they did not think this would be much of a burden on them, either. So I applaud them. I applaud them for their generous statements and their citizenship. I do not blame them for not collecting the applicable taxes. I would not collect them either if I did not have to.

Mr. President, the thrust of this amendment is to give the States the discretion. This does not impose one single thing on the States. It says to the States, "You have the discretion of requiring the collection of use tax on merchandise being shipped into your State so that retailers in your State are competing on a level playing field with out-of-State companies."

Mr. President, until that fateful November 8, 1994, I was chairman of the Small Business Committee. As chairman of the Small Business Committee, and as a former small businessman, I have always championed the rights of people to start a business, make Government as unobtrusive as possible, reduce the paperwork burden, reduce the regulatory burden, everything to give people an opportunity to grow and prosper.

When we held hearings on this bill last year, we had retailers from all over the country come and testify. We had a music store owner in my State talk about how many people came into his store, got the model number off the instrument they wanted, and went back home and ordered it.

The retail Main Street jewelry stores left in this country, you can count them on one hand, because they cannot compete. Yet these are the people we look to organize the Christmas parades in rural America. They are the people that every State depends on to pay sales taxes to educate their children. They are losing billions of dollars of sales every year to this absolutely burgeoning catalog sales business and it is time we give the States an opportunity to do something about it.

Mr. President, in the morning I am going to do two things: I am going to read you some additional letters from retailers as to what they are putting up with out there. Second, I have a whole stack of catalogs. I am going to go through some of them and show you how complicated it is now and how, if you adopt this amendment, you not only curry favor of the mayors and Governors of this country, you probably lighten the administrative burden on some catalog companies because they will only have one tax rate to worry about in each State instead of many different local rates.

Mr. President, before I yield the floor, I ask unanimous consent that this amendment be set aside until we return to S. 1 tomorrow morning. I am not sure what the hour is.

Mr. President, when are we scheduled to return to S. 1 in the morning?

Mr. President, I will withdraw that request.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Maine.

Mr. COHEN. Mr. President, I was home when I learned that the Senator from Arkansas was going to take the floor this evening and offer this amendment. I had no prior notification that it was coming up this evening.

I can perhaps understand why the Senator from Arkansas would want to file this amendment prior to the cloture vote tomorrow. This is precisely what the majority leader was just talking about.

Here we have a bill dealing with unfunded mandates, and we have the minority leader saying, "Well, we just want to amend it in a substantive way dealing with relevant and germane issues pertaining to unfunded mandates," and the first thing that happens is the Senator from Arkansas gets up and offers this amendment which has no particular relevance to this bill.

It is an example of what I mentioned on the floor the other day. We are back at it again. No sooner do we go into a new session with a new Congress, with new hopes of perhaps moving legislation at a much more expeditious fashion, at least, than we just have a series of amendments and more amendments that have nothing to do with the bill under consideration.

Now that is consistent with the Senate rules. And the majority leader said he does not want to see a change in the Senate rules; keep the Senate as the Senate and not as the House.

But the American people ought to understand why it is we cannot move forward with legislation: because every individual Member has his or her particular amendment that they want to offer.

With respect to this particular amendment, this would reflect a major change in existing law. There is no mistake about it. This would be a major change in existing law.

It is being offered without any hearings having been held in the Finance Committee—not one. And yet on the floor of the Senate, the Senator from Arkansas wishes to make this rather significant change. The Small Business Committee, I am told, held one hearing on the issue. But none in Finance which is the committee of jurisdiction.

Now the supporters of the amendment argue this is a matter of fairness for local retailers.

It is grossly unfair to ask mail order companies to collect taxes for over 6,000 jurisdictions. Do you really want to talk about putting burdens on people? Ask a mail order company to collect taxes for 46 States. There are some

6,000—just count them, 6,000—different taxes in this country that would have to be considered.

But the Senator from Arkansas says, "Well, that is just too bad. We are going to impose that burden on these mail order companies."

We have a Maine snack tax, to give you an example. It is virtually indecipherable to most Maine companies. I think it would be absurd—absurd—to expect every fruitcake vendor in this country to understand it. But that is what the Senator's amendment would do.

Second, about 30 percent of all of the mail orders are paid not by credit cards, but by check. So if the check is made out in the wrong amount, any mail order company, L.L. Bean or any other company in the country would have a difficult time collecting this particular tax if the calculation is wrong.

Now the Home Shopping Network collects State and local taxes. They are made via credit cards, where the seller simply adds an appropriate tax to it.

The Senator from Arkansas has talked about the great advantage that is being held by these mail order companies over the local retailer. The fact is, the local retailers also pay taxes to enjoy benefits that out-of-State companies do not.

As a matter of fact the out-of-State companies are not at a competitive advantage. They have to add the shipping cost. These are costs that are added to the product. They have to do it on a single item basis rather than in bulk, because when people call up and say, "Can we have the product?" they have to order and pay the shipping and mailing costs, which far exceed the sales tax in many cases. That is an added expense the local retailer does not have to bear. So Senator BUMPERS may talk about competitive advantage, but it does not exist. Mail order companies do not, let me repeat, do not enjoy a competitive advantage by not having to collect these taxes.

The States have numerous ways to handle the collection of their taxes? In Maine, for instance, we assume that people in each income category have purchased a number of goods from out of State, and the State imposes a presumptive use tax. Maine has devised its own means of collecting taxes for goods purchased across State lines through mail order. Why not let the States handle it without the Senator from Arkansas mandating another rule, where no hearings have been held by the committee on jurisdiction. It is an extensive change. We ought not to undertake it on this particular bill.

Mr. President, as I indicated, I was not aware that this was going to be brought up this evening. But I understand why it was. Last year an agreement was nearly reached involving the voluntary collection of State use taxes. This was negotiated by the direct marketing association and the multistate taxes commission, federation of tax ad-

ministrators, and small businesses. They tried to reach an agreement to reduce the 6,000 taxes down to maybe 46 so that within each State there would be only one rate. Unfortunately, the agreement fell apart in the end.

This amendment is very significant and should not be offered to this bill. I support the majority leader, where he says it is time to file cloture. I hope that we do invoke cloture tomorrow. And to eliminate those amendments including these types of amendments that are being offered tonight on the Senate floor.

Mr. President, I will have more to say tomorrow, but for the moment I will yield the floor.

Mr. BUMPERS. Mr. President, I just want to comment for a minute or two, because I know the other Senator from Maine wishes to be heard.

No. 1, if I were a Senator from Maine I would be making the same speech I just heard. The second biggest catalog sales house in the United States is L.L. Bean from the great State of Maine.

But there is another very cogent point I neglected to make in my opening comments, and that is the State of Maine collects the sales taxes for every dime's worth of goods that L.L. Bean sells in the State of Maine. They do not collect 1 penny for the other 49 States. They are probably in the half billion dollar range now, maybe much more than that. They are the second biggest. I believe Lands' End in Wisconsin is the biggest in the country.

So, No. 1, everybody should understand that under current law, law established in various Supreme Court decisions, any mail order house that maintains a retail outlet in another State has to collect the sales tax for that State. J. Crew, they have retail outlets in Maryland and Virginia. Eddie Bauer has retail outlets in about 15 States. So those companies must collect use taxes when their mail order merchandise goes into States where they maintain retail outlets. It is only when they do not have a retail outlet in a particular State that they do not have to collect use taxes on the mail order goods sent into that State.

To suggest that this does not give mail order houses a competitive advantage when I just got through reading a letter about how this company in Long Beach, CA, lost a \$250,000 sale because of a \$20,000 savings in the sales tax. Why, of course people price shop. I will fill the record up tomorrow with cases just like it where people tried their very best to make a sale, and they say thank you very much for telling us about it, we will go across the State line and buy the merchandise and bring it back in and save the money.

Mr. President, to say that this amendment is not germane to the Unfunded Mandates bill is something that defies imagination. With the Unfunded Mandates bill, we are talking about the burden that Congress has been putting on the States of this Nation, ordering them how to build their landfills, how

to fill the landfill, what their municipal water supplies must do, every kind of environmental regulation we could put on them. They say "we want you to start paying for it."

The thrust of that idea is legitimate. I believe in it. It is a very complex issue. But this amendment says to the States, "Those burdens we have already placed on you, we will help you pay for that." And to say that principle is not germane to this bill makes no sense. We are simply saying we will help you pay for your landfill, if you, State and local government, want us to.

Let me repeat what I started off saying in the beginning: Maine, since it already collects the sales tax from all the sales made off of L.L. Bean—and I misspoke earlier, Senator—it was Lands' End that said they do not think this would be a burden. L.L. Bean has not said that, to my knowledge.

But Maine has the best of all worlds. And I love Maine. I have the utmost respect for my colleagues from Maine. But they are collecting sales taxes on all the sales they make in Maine, but they do not collect a red cent for the merchandise they send into other States through catalog sales. They do not pay for disposing of the catalogs in the local landfill or the packaging they send the merchandise in. The Senator says that is not germane. That is what this bill is all about, trying to help the States.

So, Mr. President, I cannot say it often enough, this amendment gives the States the discretion. It does not require the States to do one blessed thing. It says if the States want to require out-of-State companies to collect use taxes, just as retail outlets in your State have to collect sales taxes, the States can do it. It has only been since 1992 when the Supreme Court ruled in Quill versus North Dakota, that we could even debate this issue here.

Now, Mr. President, this is an idea that will not go away. It will happen, sure as God made little apples. Maybe not on this bill, but it will happen. And the sooner the people in this business understand that, the better off we will all be. I yield the floor.

Ms. SNOWE. Mr. President, I rise in opposition to the amendment that has been offered by the Senator from Arkansas, and I want to associate myself with the remarks made by the Senator from Maine, [Mr. COHEN].

I guess in hearing the arguments presented by the Senator from Arkansas tonight one would think this is a very simple matter. In fact, it would put national marketers and mail order companies as well as consumers at a disadvantage, and certainly would hurt the thousands of jobs that are provided by these companies.

There is no tax advantage for mail order companies, as the Senator from Maine indicated. They have to charge for postal rates, and many times these charges exceed the cost of local taxes

or State taxes. Also, mail order companies do not derive the benefits from having their presence in a local community like many of the local merchants and, therefore, do not create additional costs do a local community.

In a State like Maine, we have taken a very reasonable approach. What we have done is require the taxpayer to play a flat rate on their tax return when they file it in April for the amount of the taxes they owe in out-of-State purchases. That is the requirement. Granted, it requires a good-faith effort on the part of the taxpayers in Maine, but it has worked and it is a far better approach than applying this kind of a tax through a bill that has no relation to the issue before us in the Senate.

This amendment would impose a major new burden on many companies throughout the country without the benefit of hearings to explore the ramifications of such a tax on mail order companies. We are not only talking about the imposition of a tax, we are talking about compliance costs, and those are not minimal, if you consider the fact that mail order companies would be required to cope with no less than 46 types of procedures and exemptions from over 6,000 State and local tax rates. The compliance tax alone would be 6.5 times greater for mail order companies than for local retailers who must only contend with one tax rate and one set of exemptions.

The Senator from Arkansas mentioned L.L. Bean. For L.L. Bean, that would cost \$500,000 per year for compliance, just in the administrative accounting and legal fees that would be involved, not to mention the fact that, of course, a blended tax rate would mean that for many customers, in fact, for probably half the customers, they would pay more tax than they actually owe. So, of course, that would contribute to a loss of confidence and erode sales for the company. I suspect the 100 million Americans who shop by mail order today would also find such an unfair tax scheme unjustifiable.

This amendment would have an economic impact on everyone. Jobs would be lost in Maine and elsewhere in the country.

This is an unfair imposition, it is an unreasonable administrative burden when there are other approaches that can be taken and, in fact, are being pursued.

As Senator COHEN mentioned, there has been an approach taken by the industry to look at resolving this matter in a way which could be fair to the industry without creating additional and onerous burdens, as well as excessive costs far beyond the local taxes that they would be required to collect, and they are working on such an agreement.

I think we ought to encourage a negotiated settlement that would satisfy both parties without unnecessarily burdening companies or consumers and

costing thousands of jobs all across this country.

The revenues raised under this proposal, according to the Senator from Arkansas, would be about \$1.6 billion. But, in fact, it would be far less than that when you deduct compliance costs. This amendment would require States to audit out-of-State firms. It would certainly add costs to the States as well as to the mail order companies.

The Senator from Arkansas mentioned that this would benefit local merchants and small businesses, but it is interesting to note that the one organization that represents thousands of small businesses and merchants all across America undertook a survey last year asking their clients whether or not they support such a collection by mail order companies. Only 25 percent said yes and 67 percent said no to such a mandate.

It is because they recognize that it would hurt many local economies across America. It would cost jobs, and the administrative burden would be a nightmare. It would be very difficult to comply with such a mandate and that the tax structure would be so complex that there would be many mistakes in the process of calculation.

I hope that my colleagues in the Senate will oppose the amendment offered by the Senator from Arkansas because, clearly, it would not result in the kind of benefits that he mentioned this evening and certainly would result in the loss of thousands of jobs and additional regulatory costs. Now is not at a time when we can afford these economic losses.

I thank my colleagues and yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, Senator HATCH, the chairman of the Judiciary Committee, has provided a statement which addresses constitutional issues raised earlier today by Senator BYRD with regard to the unfunded mandates legislation. He states in this statement that he is "unpersuaded that there would be any constitutional problem" with the issues raised.

(At the request of Mr. LOTT, the following statement was ordered to be printed in the RECORD:)

Mr. HATCH. Mr. President, I have listened with care to what Senator BYRD has said regarding what he sees as a constitutional question raised by one provision of this unfunded mandates legislation. I appreciate his thoughts on this issue. I am unpersuaded, however, that he has identified a serious constitutional problem. Indeed, I am convinced that a careful analysis will show that his concern is unwarranted.

In the first place, Senator BYRD's concern is not that a provision of S. 1 is facially unconstitutional but merely that it might possibly be applied in an unconstitutional manner. This same objection could be raised against vir-

tually every law. The mere possibility that a provision might be applied in an unconstitutional manner has never been regarded as sufficient to invalidate it. Otherwise, Congress could never enact anything. In any event, if a problem with a possible application of this provision were to arise in the future, that problem would be raised by an implementing bill. It is that future implementing bill that would require reconsideration, not the bill currently before us. In other words, since the concern raised by Senator BYRD relates to one manner in which the provision might be applied, that concern should be raised if and when a later bill adopts that manner. In short, the concerns raised by Senator BYRD are not suited to a facial challenge to the provisions of this unfunded mandates legislation.

Second, even under the speculative possibility raised by Senator BYRD, I am unpersuaded that there would be any constitutional problem with the possibility that he raises. It is noteworthy that Senator BYRD is unable to cite even a single Supreme Court case—or any case from any court, for that matter—in support of his argument that the provision he is concerned about presents constitutional problems. This is not surprising, for his argument is, I believe, unsustainable. Congress can act to sunset legislation through a variety of means. That it might do so through a mechanism that involves administrative agencies does not make that mechanism ipso facto constitutionally suspect. In short, I see nothing in the provision at issue that involves any delegation of legislative powers to agencies, much less any unconstitutional delegation.

Third, it seems clear to me that Senator BYRD misunderstands the provision that he is worried about. This provision specifies a requirement that must under some circumstances be satisfied in order to avoid having a point of order lie. Let's assume for the sake of argument that the requirement was constitutionally defective. All that would mean is that the requirement could not be lawfully satisfied and that a point of order would therefore lie. Were this the case, the Senate could decide whether or not to overrule the point of order.

Mr. President, some people will look for any excuse, however flimsy, to continue imposing burdensome unfunded mandates on States and localities. It is especially amusing that my colleagues on the other side of the aisle who have championed a massive Federal bureaucracy are now invoking an exaggerated, hyperrestrictive version of the doctrine that Congress is limited in the powers that it can delegate to administrative agencies. There is no merit to the argument, and no one should hide behind it.

Ms. MIKULSKI. Mr. President, I rise today to discuss S. 1, the Unfunded Mandate Reform Act. Mr. President, in traveling throughout the State of Maryland, I have heard complaints of

local officials who have been forced to balance the needs of their community against compliance with Federal regulations.

These local officials have raised valid concerns over the pressure to implement mandates imposed by Washington with no funds to back it up. I believe we need to work as a partner with our cities, towns, and counties—not as their adversary.

I support the validity of their concerns. I am on their side.

We need to have a better understanding about the costs of Federal mandates—on the public sector and private sector—and help our local partners meet those costs.

I am glad the Senate has finally begun the debate on this important issue. I believe the Unfunded Mandate Reform Act takes an important step toward correcting many of the problems of the past.

This legislation will make Congress estimate the costs of new legislation and regulations on State and local governments and the private sector, specify the means to pay for it, and reduce or eliminate a mandate if adequate funding is not provided.

This bill applies only to new legislation. It does not effect any existing law or program. Furthermore, this legislation exempts any law or regulation that enforces constitutional rights, establishes or enforces laws that prohibit discrimination, provides emergency assistance to State and local governments, pertains to national security or treaty ratification and any bill designated as an emergency by the President and Congress.

While I wholeheartedly support these exemptions, as well as the overall intent of this legislation, I have a number of questions regarding its impact and applicability.

I am very concerned about this bill's impact on laws that are designed to protect public health and safety. Will this bill diminish the Government's ability to protect public health and provide essential public safety?

I am concerned about how this bill defines public and private and how it impacts future laws and programs. Could a mandate exempt the public sector while applying to the private sector? Could public schools be exempt from a mandate while Catholic or other religious day schools would be forced to comply?

Would future emissions standards apply to UPS trucks but not MTA buses?

I am concerned about how Federal agencies will have to implement the complex provisions of this legislation. For example, will Federal agencies be forced to rewrite regulations every year if funding levels change?

I am concerned about confusion this bill may generate to State and local governments and the private sector.

I believe we need laws and regulations that are clear, enforceable, and universally applicable. I support the in-

tent of this legislation and many of its provisions; at the same time I remain concerned over the issues I have outlined. I believe these questions need to be answered before the Senate adopts any unfunded mandates legislation.

REGARDING RELATIONSHIP BETWEEN UNFUNDED MANDATES AND SOUND RISK REGULATION

Mr. JOHNSTON. Mr. President, I want to point out to my colleagues the connection between S. 1, the unfunded mandates bill, and a matter that is close to my heart—the risk assessment and cost-benefit provision that passed the Senate twice on the last Congress, only to die in the House. As my colleagues may recall, it passed by a vote of 95 to 3 on the EPA Cabinet bill in 1993, and then, after significant revision, passed again on the safe drinking water bill in 1994 by a vote of 90 to 8.

One of the best ways to reduce unfunded mandates—whether it be on State and local governments or the private sector—is to set aside the issue of funding and examine whether the mandate itself is sound. Federal regulations that do not address a significant risk in a cost-effective manner must be avoided, regardless of who pays. Put another way, the argument over who should pay for a mandate will be much easier to resolve if the mandate itself is as lean as possible to do the job.

Section 202 of S. 1 begins to get at this idea when it requires the Federal agency, when promulgating a regulation that will cost \$100 million or more, to prepare a written statement providing "a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal intergovernmental mandate, such as the enhancement of health and safety and the protection of the natural environment * * *." This is a certainly a good provision as far as it goes.

But this problem will not be fully addressed until the Senate turns once again to the subject of risk-based regulatory reform. I was initially inclined to offer last year's risk amendment to this bill, but I have been convinced to withhold so that we can consider possible improvements to last year's risk provision.

Right now, Chairman MURKOWSKI and I are working on legislation that will build on last year's provision. We intend to introduce the bill soon, hold hearings in the Energy Committee soon thereafter, and move to consideration of the bill on the Senate floor at the earliest opportunity.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United

States submitting a nomination which were referred to the Committee on Governmental Affairs.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, without amendment:

S. Res. 62. An original resolution authorizing expenditures by the Committee on Labor and Human Resources.

By Mr. SIMPSON, from the Committee on Veterans Affairs, without amendment:

S. Res. 64. An original resolution authorizing expenditures by the Committee on Veterans' Affairs.

By Mr. SPECTER, from the Select Committee on Intelligence.

Special Report entitled "Committee Activities of the Select Committee on Intelligence for the period January 4, 1993 through December 1, 1994" (Rept. No. 104-4).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on January 18, 1995, she had presented to the President of the United States, the following enrolled bill:

S. 2. An act to make certain laws applicable to the legislative branch of the Federal Government.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-131. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC-132. A communication from the Chairman of the National Endowment for the Humanities, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC-133. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC-134. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC-135. A communication from the Director of the Arms Control and Disarmament Agency, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC-136. A communication from the President of the Inter-American Foundation, transmitting, pursuant to law, the report on the internal controls and financial systems